	Case 3:07-cv-05576-EDL Document 5	Filed 02/06/2008 Page 1 of 5			
1 2 3	LAW OFFICE OF JOEL J. THOMAS Joel J. Thomas, Esq. (Calif. SBN 195034) 46 Windjammer Court Long Beach, CA 90803 (562) 430-3848				
4	Attorney for Defendant, P.W. Stephens, Inc.				
5	1 .vv. ocephens, me.				
6					
7	United States District Court				
8	For the Northern District of California				
9	San Jose Division				
10	P. W. STEPHENS, INC.	Case No.: C07-05576 EDL			
11	Plaintiff,				
12	VS.	P.W. STEPHENS, INC.'S ANSWER TO ALEJANDRO NAVE			
13	ALEJANDRO NAVA	COMPLAINT FOR DAMAGES			
14	Defendant,				
15					
16					
17	Defendant, P.W. Stephens Inc. answering the plaintiff's Complaint, denies,				
18	and alleges as follows:				
19	GENERAL DENIAL				
20	1) This answering defendant denies generally and specifically each				
21	and every allegation in said unverified Complaint, and the whole thereof, including				
22	each and every purported cause of action contained therein, and denies that				
23	plaintiffs sustained damages in any sum or sums, described in the Complaint.				
24	2) Further defendant denies each and every allegations of the complaint and				
25	demands strict proof. Defendant specifically denies it that they did not pay				
26	overtime correctly as alleged in the complaint. FIRST AFFIRMATIVE DEFENSE				
27	<u>FIRST AFFIRM</u>	MATIVE DEFENSE			

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(Failure to State a Cause of Action)

3) For a first, separate and affirmative defense, this answering defendant alleges plaintiff's unverified Complaint on file herein fails to state facts sufficient to constitute a cause of action against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

(Waiver of Condition)

4) If it is determined that this answering defendant failed to perform one or more of the obligations under any contract or agreement, this answering defendant contends that Plaintiffs waived it's right to require such performance by plaintiff's acts or omissions in each instance.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

5) This answering defendant is informed and believes and thereon alleges that plaintiff and or/their successors failed, refused and neglected to reasonably mitigate damages, which bars or diminishes any recovery herein by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

(Acts of Others)

6) This answering defendant is informed and believes and thereon alleges that it is not legally responsible for the acts and/or omissions of those defendants not named herein.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

7) This answering defendant is informed and believes and thereon alleges that the plaintiffs have engaged in conduct and activity sufficient to constitute a waiver of any action alleged in the unverified Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Estopple)

8) This answering defendant is informed and believes and thereon alleges

that the plaintiffs have engaged in conduct and activities with respect to the contracts, transactions, occurrences and incident which are the subject of the Complaint, and by reason of said activities and conduct, are estopped from asserting any claims for damages or seeking any other relief against this answering defendant.

SEVENTH AFFIRMATIVE DEFENSE

(License)

9) This answering defendant is informed and believes and thereon alleges that defendant had a right to do the acts alleged in the complaint or was authorized either orally or in writing to do such acts and such license and authorization was granted to the defendant either expressed or implied by the plaintiff

EIGHTH AFFIRMATIVE DEFENSE

(Statute of limitations)

10) Defendant is informed and believes, and on that basis alleges, that the cause of actions alleged in the complaint are barred by particular limitations and the provisions of and related Federal statute of limitations.

WHEREFORE, this answering defendant request that:

- 1) Take nothing by way of their unverified Complaint herein;
- 2) That this defendant be awarded costs of suit incurred herein; and
- 3) For such other and further relief as this Court may deem just and proper.

DATED: 02/06/08 LAW OFFICE OF JOEL J. THOMAS

By:_____/s/____

Joel J. Thomas

Attorney for Defendant P.W. STEPHENS, INC.

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PROOF OF SERVICE BY MAIL - OFFICE DEPOSIT [CCP 1013 (a) (3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, I am over the age of 18 years, and not a party to the within action; my business address is 46 Windjammer Court, Long Beach, CA 90803.

I am readily familiar with my employer's business practice for collection and processing of correspondence by mailing with the United States Postal Service.

On February 6, 2008, following ordinary business practice, I served the within ANSWER TO COMPLAINT on the party or parties named below, by placing the original or a true and correct copy thereof in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited in the United States Postal Service that same day in the ordinary course of business, addressed as follows: SEE ATTACHED MAILING LIST.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct and that this declaration was executed on February 6, 2008, at Long Beach, California.

3y:	/s/		
	JOEL J	. THOMAS	

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PROOF OF SERVICE MAILING LIST

NAVA v. P.W. STEPHENS

CASE NO.: C07-05576 EDL

Counsel for Plaintiff, NAVA

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San Jose, CA 95113

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